IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1545 OF 2005

M/s. Lionel Edwards Ltd.	...	Petitioner
Vs.		
M/s. Shapoorji Data Processing Limited & Ors.	...	Respondents

Mr. P.N. Patwardhan for the petitioner.

Mr. Chirag Balsara for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 25TH APRIL, 2005.

P.C.:-

1. Rule. By consent of the parties taken up for hearing forthwith.

2. By the impugned order, the trial court has discharged the notice taken out by defendant 1 for appointment of the Court Commissioner. The witness, who was to be examined on commission is one Mr. Gobardhan Sen. He is an aged person. After retirement, he has become a Consultant of defendant 1. Being a person, who is conversant with the facts of the case, defendant 1 wants to examine him but defendant 1's case is that the witness is 74 years' old and he is unable to take the journey by train or plane from Kolkatta to Mumbai. Apparently, the trial court was not impressed by defendant 1's case that

Mr. Gobardhan Sen is suffering from several ailments.

3. Having heard the learned counsel for the parties, I am of the opinion that without going into the rival contentions, the matter could be sorted out.

4. Mr. Patwardhan, the learned counsel for the petitioner/defendant 1 stated that the petitioner/defendant 1 is not claiming any relief against respondents 2 and 3 and they are impleaded as formal parties. Upon a query made by the court, Mr. Patwardhan stated that the petitioner/defendant 1 will be able to bring Mr. Gobardhan Sen to Mumbai in the first week of July, 2005 to have his further evidence recorded under cross-examination by the advocate for the plaintiffs. He submitted that, however, a suitable date in July, 2005 be given for recording his evidence and in that case, the petitioner will withdraw Interim Application/Notice No.5611 of 2004 for want of prosecution. The learned counsel for the parties have stated that if such order is passed, it is not necessary for me to give any reasons. Hence, I am not giving any reasons. In view of the above, in my opinion, the following order will meet the ends of justice.

5. The petitioner/defendant 1 shall bring it's first witness i.e. Mr. Gobardhan Sen to Mumbai in the first week of July, 2005 to have his evidence recorded under cross-examination by the advocate for the plaintiffs.

The trial court shall adjourn the suit to 6/7/2005 for recording the evidence of Mr. Gobardhan Sen. Mr. Patwardhan, the learned counsel for the petitioner/defendant 1 states that in view of this, the petitioner/defendant 1 will withdraw it's Interim Application/Notice No.5611 of 2004 for want of prosecution on 6/7/2005. The writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)